

W. 2763 No. 13439

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United States  
Court of Appeals  
For the Ninth Circuit.

SHIPOWNERS AND MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Apostles on Appeal

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

AUG 27 1952



No. 13439

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

JAMES A. QUINBY, ESQ.,  
LLOYD M. TWEEDT, ESQ.,  
STANLEY J. COOK, ESQ.,  
DERBY, SHARP, QUINBY & TWEEDT,  
1000 Merchants Exchange Building,  
San Francisco 4, California,  
Proctors for Appellant.

CHAUNCEY F. TRAMUTOLO, ESQ.,  
United States Attorney,

KEITH R. FERGUSON, ESQ.,  
Special Assistant to the Attorney General,

J. STEWART HARRISON, ESQ.,  
Attorney, Department of Justice,  
Post Office Building,  
San Francisco, California.  
Proctors for Appellee.





In the United States District Court for the  
Northern District of California, Southern  
Division

In Admiralty—No. 25871

UNITED STATES OF AMERICA,

Libelant,

vs.

SHIPOWNERS AND MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Respondent.

**LIBEL FOR COLLISION DAMAGE**

To the Honorable, the Judges of the United States  
District Court for the Northern District of  
California, Southern Division:

The libel of United States of America, as owner  
of the SS Golden Gate, in a cause of collision, civil  
and maritime, respectfully alleges as follows:

**I.**

At all times hereinafter mentioned the libelant  
United States of America was and now is a corpora-  
tion sovereign and the owner of the SS Golden  
Gate, a steamship of 6,214 gross tons (Official No.  
244,413), which, up until the time of the collision  
hereinafter described, was tight, staunch and strong  
and in all respects seaworthy and properly manned,  
officered, equipped and supplied for the purposes  
intended.

## II.

The respondent, Shipowners and Merchants Tugboat Company, was a corporation, duly organized under the laws of one of the States of the United States, and has a principal place of business within the territorial jurisdiction of this Honorable Court.

## III.

The respondent, Shipowners and Merchants Tugboat Company, was the owner and operator of the tug Henry J. Biddle on July 12, 1945, and at all times hereinafter mentioned.

## IV.

On July 12, 1945, the SS Golden Gate was towed from Moore Drydock Company Yard in Oakland to Pier 19, San Francisco, in San Francisco Harbor, by the tugs Sea Scout, Reliance, Crowley No. 24 and Henry J. Biddle. The SS Golden Gate had no power of her own and was not making use of her engines during this maneuver but was being moved as a "dead ship" by the tugs above named. During the afternoon of that day and in the course of the movement above described, the tug Henry J. Biddle collided with the SS Golden Gate, denting various plates on the port side of the latter ship and causing other serious damage.

## V.

The aforesaid collision and the damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of those on board the SS Golden Gate but were caused wholly by and

due solely to fault and negligence on the part of those in charge of the tug Henry J. Biddle in the following particulars, among others, which will be brought out upon the trial:

1. She was not in the charge of competent persons.
2. She was proceeding at an immoderate rate of speed under the circumstances.
3. She was not properly equipped or manned.
4. She failed to navigate with due caution required under the circumstances, thereby causing the collision and damage to the SS Golden Gate.
5. She did not take proper precautions to avoid the collision.
6. She collided with the SS Golden Gate, which she was assisting to move as a "dead ship."

## VI.

By reason of the premises and as a result of the collision libelant has sustained heavy damages consisting of the cost of repairing the SS Golden Gate, the expenses of the vessel during repairs, and other substantial expenses necessarily incurred and to be incurred as a result of the collision. That immediately after said collision the said damage to the SS Golden Gate was surveyed by marine surveyors and the cost of making said collision repairs was estimated at the sum of \$7,100.00, no part of which sum has been paid although payment thereof has been duly demanded.

## VII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against Shipowners & Merchants Tugboat Company, and that said respondent may be required to appear and answer on oath all and singular the matters aforesaid; that libelant may have a decree for its damages with interest and costs; and that the Court will grant to libelant such other and further relief to which it may be entitled in law and justice.

/s/ CHAUNCEY F. TRAMUTOLO,  
United States Attorney,  
By KRF

/s/ KEITH H. FERGUSON,  
Special Assistant to the  
Attorney General,

/s/ J. STEWART HARRISON,  
Attorney, Department of  
Justice, Proctors for  
Libelant.

[Endorsed]: Filed May 16, 1951.

[Title of District Court and Cause.]

ANSWER TO LIBEL

To the Honorable, the Judges of the Above-Cap-  
tioned Court:

The answer of respondent, Shipowners and Mer-  
chants Tugboat Company, a Corporation, to the  
libel on file herein, respectfully admits, denies and  
alleges as follows:

I.

Answering paragraph I, denies that said vessel  
was in all respects seaworthy prior to the collision,  
and alleges, on information and belief, that the same  
was then not in first-class condition, but was in need  
of overhaul and repair.

II.

Admits the allegations of paragraph II.

III.

Admits the allegations of paragraph III.

IV.

Admits the allegations of paragraph IV, except  
that respondent denies that the damage to the  
Golden Gate in said collision consisted of anything  
more than a few shallow dents in her port side  
plating, none of which was at all serious and none  
of which caused her to leak or impaired her former  
state or required repair.

V.

Answering paragraph V, denies generally and

specifically each of the six allegations of fault therein contained, but admits that said collision was not caused by any fault on the part of the Golden Gate.

#### VI.

Answering paragraph VI, denies that libelant sustained any damage in excess of \$250 for survey and repairs actually made; denies that any other costs or expenses were incurred by libelant or that any other repairs were necessary or were ever made, and alleges that said collision caused no diminution in the value of said Golden Gate to libelant; in this connection respondent alleges, on information and belief, that said vessel was one of a number of used surplus ships of the same class, dimensions, equipment and value, all of which ships were intended to be sold by libelant and all of which were in fact thereafter sold at a uniform price, and that said Golden Gate was eventually sold for exactly the same price as the other ships of said group, with no diminution in value or sales price from said collision or from any damage sustained by said vessel in said collision.

#### VII.

Admits the allegations of paragraph VII.

Further answering said libel, and as a First Special Defense thereto, respondent alleges as follows:

#### I.

The cause of action attempted to be asserted in said libel is barred by laches, in that said collision

occurred on July 12, 1945, and libel was not filed until May 16, 1951, the period which libelant allowed to elapse between collision and libel thus being 5 years, 10 months and 4 days.

Further answering said libel, and as a Second Special Defense thereto, respondent alleges as follows:

I.

Prior to and at the time of said collision said tug Henry J. Biddle was an American vessel, home port San Francisco, owned and operated by respondent. At all times herein concerned said tug was reasonably worth no more than \$1,500.

II.

Prior to the start of the voyage on which said collision occurred, respondent had used due diligence to make said tug in all respects sound, seaworthy and properly manned, equipped and supplied, and prior to and at the time of said collision said tug was in fact sound, seaworthy, and properly manned, equipped and supplied.

III.

The collision herein concerned happened without the knowledge, fault or privity of respondent corporation or any of its officers, and any damage sustained by libelant was done, occasioned and incurred without the knowledge, fault or privity of respondent corporation or any of its officers.

## IV.

Any liability on the part of respondent should be limited to the value of the tug Henry J. Biddle as provided by the United States statutes for "Limitation of Vessel Owner's Liability" (46 U.S.C.A. 183 et seq.), of which statutes respondent herewith claims the benefits and protection.

Wherefore respondent prays for judgment in its favor and for such other and further relief as may be just and proper in the premises.

Dated: June 5th, 1951.

DERBY, SHARP, QUINBY &  
TWEEDT,  
Proctors for Respondent.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed June 12, 1951.

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[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY RE-  
SPONDENT TO LIBELANT UNDER SU-  
PREME COURT ADMIRALTY RULE 31

1. Please describe the Golden Gate in detail as to dimensions, tonnage, engines, class, design and age.

2. Is it not true that the Golden Gate was one of several sister ships of the same design, class, dimen-



sions, tonnage and type of engine and equipment, owned by the United States in 1945?

3. Was not the Golden Gate sold subsequent to the collision?

4. If the answer to interrogatory #3 is "yes,"

a. When was she sold?

b. To whom was she sold?

c. What price was obtained for her?

5. Aside from temporary repairs in the amount of \$150, is it not true that no other repairs of collision damage were made to the Golden Gate before she was sold?

6. Is it not true that, at various times before and after the sale of the Golden Gate, libelant sold other vessels of the same class, design, dimensions, tonnage, type of engines and equipment as the Golden Gate?

7. If the answer to interrogatory #6 is "yes,"

a. What were the names of such other ships?

b. When were they built?

c. When were they sold?

d. What price was obtained for each of them?

8. Is it not true that, after World War II, libelant sold a number of vessels to various buyers?

9. If the answer to interrogatory # 8 is "yes,"

a. Was not a standard price established by libelant for vessels of the Golden Gate's class, design, dimensions, etc.?

b. What was that standard price?

c. Did not the Golden Gate sell for that established price?

10. In the negotiations leading to the sale of the Golden Gate,

a. Was the subject of collision damage discussed in any way with the buyer?

b. Did the buyer request any reduction in price because of existing collision damage?

c. Was any reduction in price made or allowed because of collision damage?

11. Is it not true that the Golden Gate was sold for the same price at which she could and would have been sold had there been no collision damage?

12. If it be contended that the sales price received for the Golden Gate was in any way reduced or diminished because of damage incurred in the collision with the Henry J. Biddle, please state the details as to the amount of such reduction and the manner in which it was made.

Dated: June 4, 1951.

DERBY, SHARP, QUINBY &  
TWEEDT,  
Proctors for Respondent.

Receipt of copy acknowledged.

[Endorsed]: Filed June 13, 1951.

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES PRO-  
POUNDED BY RESPONDENT TO LIBEL-  
ANT

1. The SS Golden Gate was a C2-S-B1 type vessel, built in 1943 by Moore Dry Dock Company at Oakland, California. Her gross tonnage is 6,214.41 and net tonnage 3,508. She is 438.9 feet in length, her depth is 27.75 feet, and width 63.1 feet. She was propelled by General Motors cross-compound steam turbines transmitting power to the main line shaft through double reduction gears.

2. Yes.

3. Yes.

4. (a) September 5, 1946;

(b) Compania Sud Americana da Vapores  
(Chilean Line);

(c) \$957,818.00.

5. Yes.

6. Yes.

7. (a) There were 113 ships of the exact class and design of the Golden Gate built during World War II. Exception is taken to this interrogatory on the ground that it is not relevant, and the naming of the individual ships imposes a useless burden upon the libelant.

8. Yes.

9. (a) No. The prices of the various ships are established by section 3(d) of the Ship Sales Act of 1946, (50 U.S.C.A. App. 1735-1941). The statute set a standard for determining the price to be charged, which varies within the limits of the floor price according to age, conditions and features present or lacking in the particular vessel;

(b) None, as explained in (a);

(c) See above.

10. (a) We have no knowledge of any such discussion;

(b) No;

(c) No.

11. Yes.

12. See answer to 11.

Dated August 9th, 1951.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney.

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General.

/s/ J. STEWART HARRISON,  
Attorney, Department of  
Justice, Proctors for  
Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed August 9, 1951.

[Title of District Court and Cause.]

## STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed that the above-entitled cause be submitted to the above-entitled Court for decision upon the following Statement of Facts.

### I.

On July 12, 1945, the SS Golden Gate, owned by the United States through the War Shipping Administration, was being moved as a "dead ship," from Moore Drydock Company in Oakland, California, to Pier 19 in San Francisco by the tugs Sea Scout, Reliance, Crowley No. 24, and Henry J. Biddle. After the Golden Gate had cleared the repair yard, and while she was being towed to Pier 19, the tug Henry J. Biddle struck the Golden Gate head on, damaging the SS Golden Gate.

### II.

The collision was caused solely by the faults, errors and negligent navigation of the tug Henry J. Biddle, and was not contributed to in any way by any act or neglect on the part of the SS Golden Gate or any agent or employee of libelant United States of America.

### III.

At the time of the collision the tug Henry J. Biddle was owned and operated by respondent Shipowners and Merchants Tugboat Company, which is legally liable for the faults of the tug. Said collision, however, occurred without the knowledge

or privity of respondent or of its directors or managing or executive officers, and respondent is therefore entitled to limit its liability, under Sections 183-189 of Title 46, U. S. Code, to the value of the tug.

#### IV.

At the time of the collision and at the end of the voyage on which the collision occurred, the tug was worth \$1,500, and respondent is entitled to limit its liability to that amount.

#### V.

Subsequent to the collision, temporary repairs costing approximately \$250 were made to the SS Golden Gate.

#### VI.

Immediately following the collision the damage thereby done to the SS Golden Gate was surveyed by competent surveyors and the cost of permanent repairs was estimated to be \$5,400, which amount is fair and reasonable. Said permanent repairs, however, were never made, and, on September 5, 1946, libelant sold the vessel to the Chilean Line with said damage still unrepaired.

#### VII.

On March 8, 1946, approximately 8 months after the collision, a law became effective whereby Congress made provision for the disposal of War Surplus Vessels, and pursuant to the provisions of this Act (50 U.S.C.A. 1736), and Regulations duly adopted thereunder, the SS Golden Gate was sold for the minimum statutory sales price of \$957,818 on September 5, 1946, to the Chilean Line.

## VIII.

The SS Golden Gate was a C2-S-B1 type vessel built in 1943. Her gross tonnage was 6,214.41 and net tonnage 3508. She was 438.9 feet in length and 27.5 feet in depth and 63.1 feet in width. She was propelled by General Motors cross-compound steam turbine transmitting power to the main line shaft through double reduction gears.

## IX.

The price of \$957,818 was the only legal price at which a United States owned vessel of the age, class and description of the SS Golden Gate could be sold by libelant, and was the only legal price at which the SS Golden Gate could have been sold by libelant.

By reason of the aforementioned statute and regulations establishing a minimum sale price for this vessel, no reduction therefrom was sought or requested by the buyer because of the unrepaired collision damage, and no such reduction was made or allowed.

## X.

The sole issue remaining in this case is the legal issue of whether or not the estimated cost of unrepaired damage is a legally recoverable item of damage to libelant. If it is, libelant is entitled to a decree of \$1,500, by virtue of respondent's right to limit its liability, as above set forth. If it is not, libelant is entitled to a decree for \$250.

## XI.

This stipulation may be filed and made part of the record and proceedings in this case and the same is hereby submitted for decision upon the pleadings, the interrogatories and answers thereto, and this stipulation, under the applicable laws and regulations material thereto.

DERBY, SHARP, QUINBY &  
TWEEDT,

By /s/ STANLEY J. COOK,  
Proctors for Respondent.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney.

By KRF

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General.

/s/ J. STEWART HARRISON,  
Attorney, Department of  
Justice, Proctors for  
Libelant.

[Endorsed]: Filed January 11, 1952.

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[Title of District Court and Cause.]

## MEMORANDUM OPINION

This case comes here on a stipulation of facts and arises from a collision between the tug *Biddle*, owned by the respondent, and the SS *Golden Gate*,



a Liberty-type vessel owned by the libelant, United States of America, through the Maritime Commission.

It is admitted and stipulated that the respondent's vessel was solely at fault in the collision, and it is further stipulated that the respondents are entitled to limit their liability to \$1,500.00 pursuant to the provisions of the Limitation of Liability Act, Title 46, U.S.C., Sections 183-189.

The sole issue remaining in the case is the legal issue of whether or not the estimated cost of unrepaired damage is a legally recoverable item of damage to the libelant.

It appears from the stipulation of facts that this vessel remained in the unrepaired state (except for minor temporary repairs) for 18 months after the collision. At the end of this 18-month period the vessel was then sold at a price set by law for the disposal of surplus vessels by the U. S. Maritime Commission. The law set the only legal price for which this vessel could be disposed of by the United States. See 50 U.S. Code, Appendix, Sec. 1736, and C.F.R., Title 46, Chapt. 11, Supp. F, Sec. 299.56.

It is the contention of the respondent that since the United States received the full statutory price for the vessel in its unrepaired state, that no loss was suffered, and consequently the libelant is not entitled to a decree for any damages other than the cost of the minor temporary repairs.

Damages in collision cases, where the repairs are not made, can be measured either by estimated cost of repairs at a time immediately following the acci-

dent, as the libelant seeks to do here, or by the diminution in the market value of the vessel. To avoid the influence of market fluctuations and price changes, either of these methods must be accomplished as soon after the collision as is reasonably possible.

Respondent cannot escape damages by showing that the vessel was sold eighteen months after the collision for a statutory sales price; he must go further and show that this sales price fairly reflected the market value of the vessel immediately prior to the collision. The subsequent sales price eighteen months after the collision has no evidentiary significance in measuring the diminution in value of the vessel caused by the collision.

The respondent's argument, in effect, seeks to take advantage of the fact that the injured party was fortunate enough to find a purchaser for the damaged vessel who was willing to pay the full statutory price. It is a well-settled principle of law that a tort-feasor cannot escape the consequences of his wrong-doing merely because his victim was fortunate enough to receive reparation from a collateral source. See 1939 Edition of the Restatement of Torts, Section 920, Comment c. The law is so well settled on this point that further citation of authority appears unnecessary. Although it is not felt that the subsequent sale at the statutory sales price necessarily constitutes a reparation for the collision damages, in any way, the application of the principle of *res inter alios acta*, as above

stated, would prevail against respondent's contention.

It having been stipulated that the estimate of \$5,400 as the cost of permanent repairs is fair and reasonable, and that respondent is entitled to limit liability to \$1,500, the value of the tug after the collision, it is the judgment of this Court that a decree be entered in favor of the libelant, United States of America, in the sum of \$1,500 without interest or costs.

Dated this 6th day of March, 1952.

/s/ MICHAEL J. ROCHE,  
Chief Judge, United States  
District Court.

[Endorsed]: Filed March 6, 1952.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-captioned cause having come on regularly for trial on February 27, 1952, and the libelants United States of America appearing by their proctors, Chauncey Tramutolo, United States Attorney, Keith R. Ferguson, Special Assistant to the Attorney General, J. Stewart Harrison, Attorney, Department of Justice, and the respondents appearing through their proctors, Derby, Sharp, Quinby & Tweedt, by Stanley J. Cook, and the libelants and respondents having agreed upon a stipulation of

facts on file herein, argued orally the sole remaining legal issue and it was submitted to the Court. After due consideration of all the facts so stipulated and the law relative thereto, the Court being fully advised in the premises now makes the following facts so stipulated this Court's

### Findings of Fact

#### I.

On July 12, 1945, the SS Golden Gate, owned by the United States through the War Shipping Administration, was being moved as a "dead ship," from Moore Drydock Company in Oakland, California, to Pier 19 in San Francisco by the Tugs Sea Scout, Reliance, Crowley No. 24, and Henry J. Biddle. After the Golden Gate had cleared the repair yard, and while she was being towed to Pier 19, the Tug Henry J. Biddle struck the Golden Gate head on, damaging the SS Golden Gate.

#### II.

The collision was caused solely by the faults, errors and negligent navigation of the Tug Henry J. Biddle, and was not contributed to in any way by any act or neglect on the part of the SS Golden Gate or any agent or employee of libelant United States of America.

#### III.

At the time of the collision of the tug Henry J. Biddle was owned and operated by respondent Shipowners and Merchants Tugboat Company, which is legally liable for the faults of the tug. Said colli-

sion, however, occurred without the knowledge or privity of respondent or of its directors or managing or executive officers, and respondent is therefore entitled to limit its liability, under Sections 183-189 of Title 46, U. S. Code, to the value of the tug.

IV.

At the time of the collision and at the end of the voyage on which the collision occurred, the tug was worth \$1,500, and respondent is entitled to limit its liability to that amount.

V.

Subsequent to the collision, temporary repairs costing approximately \$250 were made to the SS Golden Gate.

VI.

Immediately following the collision the damage thereby done to the SS Golden Gate was surveyed by competent surveyors and the cost of permanent repairs was estimated to be \$5,400, which amount is fair and reasonable. Said permanent repairs, however, were never made, and, on September 5, 1946, libelant sold the vessel to the Chilean Line with said damage still unrepaired.

VII.

On March 8, 1946, approximately 8 months after the collision, a law became effective whereby Congress made provision for the disposal of War Surplus Vessels, and pursuant to the provisions of this Act (50 U.S.C.A. 1736), and Regulations duly adopted thereunder, the SS Golden Gate was sold

for the minimum statutory sales price of \$957,818 on September 5, 1946, to the Chilean Line.

### VIII.

The SS Golden Gate was a C2-S-B1 type vessel built in 1943. Her gross tonnage was 6,214.41 and net tonnage 3508. She was 438.9 feet in length and 27.5 feet in depth and 63.1 feet in width. She was propelled by General Motors cross-compound steam turbine transmitting power to the main line shaft through double reduction gears.

### IX.

The price of \$957,818 was the only legal price at which a United States owned vessel of the age, class and description of the SS Golden Gate could be sold by libelant, and was the only legal price at which the SS Golden Gate could have been sold by libelant.

By reason of the aforementioned statute and regulations establishing a minimum sale price for this vessel, no reduction therefrom was sought or requested by the buyer because of the unrepaired collision damage, and no such reduction was made or allowed.

### X.

The sole issue remaining in this case is the legal issue of whether or not the estimated cost of unrepaired damage is a legally recoverable item of damage to libelant. If it is, libelant is entitled to a decree for \$1500, by virtue of respondent's right to limit its liability, as above set forth. If it is not, libelant is entitled to a decree for \$250.

From the foregoing findings of fact the Court makes its

Conclusions of Law

I.

That the libelants are entitled to recover from respondent Shipowners and Merchants Tugboat Company the sum of Fifteen Hundred Dollars (\$1,500.00) in damages.

II.

That the subsequent sale eighteen months after the collision at the statutory sales price does not bar recovery by the libelants because it is not indicative of the market value of the vessel immediately following the collision and has no relation to the market value of the vessel prior to the collision.

It Is Therefore Ordered that a decree be entered in favor of liblants United States of America in the sum of Fifteen Hundred Dollars (\$1,500.00) without interest or costs.

Dated this 6th day of March, 1952.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged March 3, 1952.

[Endorsed]: Filed March 6, 1952.

In the United States District Court for the  
Northern District of California,  
Southern Division  
In Admiralty No. 25871

UNITED STATES OF AMERICA,

Libelant,

vs.

SHIPOWNERS AND MERCHANTS TUGBOAT  
COMPANY, a Corporation,

Respondent.

### FINAL DECREE

The above cause having come on regularly to be heard on the pleadings and proofs and stipulations of fact and having been submitted by the advocates for the respective parties, and after due deliberation having been had and after Findings of Fact and Conclusions of Law having been duly settled and filed;

It Is Ordered, Adjudged and Decreed that the libelant take from respondent Shipowners and Merchants Tugboat Company the sum of Fifteen Hundred Dollars (\$1,500.00) without interest or costs.

Dated this 6th day of March, 1952.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Lodged March 3, 1952.

[Endorsed]: Filed March 6, 1952.



[Title of District Court and Cause.]

PETITION FOR APPEAL

Shipowners and Merchants Tugboat Company, a corporation, respondent in the above-entitled cause, being aggrieved by the final decree made on March 6, 1952, and entered herein on March 7, 1952, claims an appeal from said decree and prays that the same be allowed.

Dated: San Francisco, California, May 28, 1952.

/s/ JAMES A. QUINBY,

/s/ LLOYD M. TWEEDT,

/s/ STANLEY J. COOK,

DERBY, SHARP, QUINBY &  
TWEEDT,

Proctors for Respondent.

[Endorsed]: Filed May 28, 1952.

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND  
STAYING EXECUTION

Pursuant to its petition for appeal dated May 28, 1952, and presented this date to the Court,

It Is Ordered that the appeal of respondent Shipowners and Merchants Tugboat Company, a corporation, from the final decree made on March 6, 1952, and entered herein on March 7, 1952, be allowed as prayed, and that, upon the said respondent deposit-

ing \$2000 in cash with the Clerk as security pending appeal, all further proceedings in execution of said decree be stayed.

Dated: May 28th, 1952.

/s/ MICHAEL J. ROCHE,  
United States District Judge.

[Endorsed]: Filed May 28, 1952.

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[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

In support of its appeal herein, respondent and appellant Shipowners and Merchants Tugboat Company, a corporation, hereby assigns error in the proceedings, orders and final decision of the District Court in the above-entitled cause, as follows:

1. The District Court erred in finding and concluding that libelant's recoverable damage herein amounted to any sum in excess of the \$250 spent for temporary repairs to the Golden Gate.

2. The District Court erred in failing and refusing to find and conclude that libelant's recoverable damage was limited to the \$250 actually spent for temporary repairs to the Golden Gate.

3. The District Court erred in concluding that libelant could recover for unrepaired collision damage to the Golden Gate, despite her subsequent sale for the full price established by federal statute and regulation.

4. The District Court erred in concluding that libelant could recover for unrepaired collision damage to the Golden Gate despite the fact that she was later sold for exactly the same amount as she could and would have sold for had there been no collision.

5. The District Court erred in concluding that the sale of the Golden Gate after the collision had no bearing on the issue as to the amount of recoverable damage herein.

6. The District Court erred in concluding that the Act of March 8, 1946 (50 U. S. C. A., appendix, 1736) and regulations adopted thereunder had no bearing on the issue as to the amount of libelant's recoverable damages.

7. The District Court erred in concluding that libelant was entitled to recover the sum of \$1500 herein.

8. The District Court erred in failing and refusing to conclude that libelant was entitled to recover \$250, only.

9. The District Court erred in entering decree against respondent for \$1500.

10. The District Court erred in failing and refusing to enter decree against respondent for \$250, only.

Dated: May 28, 1952.

/s/ JAMES A. QUINBY,

/s/ LLOYD M. TWEEDT,

/s/ STANLEY J. COOK,

DERBY, SHARP, QUINBY &  
TWEEDT,

Proctors for respondent and appellant Shipowners  
and Merchants Tugboat Company, a corp.

[Endorsed]: Filed May 28, 1952.

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[Title of District Court and Cause.]

### CITATION ON APPEAL

United States of America—ss:

The President of the United States of America to  
libelant United States of America, appellee herein,

Greeting:

You are hereby cited and admonished to be and appear at the United States Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within forty (40) days from the date hereof, pursuant to an

order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, wherein Shipowners and Merchants Tugboat Company, a corporation, is respondent and appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Michael J. Roche, United States District Judge for the Northern District of California, this 28th day of May, 1952.

/s/ MICHAEL J. ROCHE,  
United States District Judge.

Attest:

[Seal] C. W. CALBREATH,  
Clerk.

[Endorsed]: Filed May 28, 1952.

[Title of District Court and Cause.]

ACKNOWLEDGMENT OF RECEIPT OF  
PAPERS ON APPEAL

On behalf of libelant, United States of America, receipt is hereby acknowledged of copies of each of the following:

Petition for Appeal.

Order allowing appeal and staying execution.

Assignment of Errors.

Praecipe for Apostles on Appeal.

Acknowledgment of receipt of papers on appeal.

/s/ CHAUNCY TRAMUTOLO,

U. S. Atty.

/s/ KEITH R. FERGUSON,

Spec. Assist. to Atty. General.

/s/ JOHN STEWART HARRISON,

Proctors for Libelant and Appellee.

[Endorsed]: Filed May 28, 1952.

[Title of District Court and Cause.]

PRAECIPE FOR APOSTLES ON APPEAL

To the Clerk of the above-entitled Court:

Respondent Shipowners and Merchants Tugboat Company, a corporation, having appealed to the United States Court of Appeals for the Ninth Cir-

cuit from the final decree heretofore made and entered herein, you are hereby requested to prepare and certify Apostles on Appeal in accordance with the rules of said Court of Appeals, and to file such Apostles with said Court of Appeals in due course, Please include therein the following:

1. Libel for collision damage.
2. Answer to libel.
3. Interrogatories propounded by respondent to libelant.
4. Answers to interrogatories propounded by respondent to libelant.
5. Stipulation of Facts.
6. Findings of Fact and Conclusions of Law.
7. Final Decree.
8. Memorandum Opinion filed March 6, 1952.
9. Petition for Appeal.
10. Order allowing appeal and staying execution.
11. Assignment of Errors.
12. Praeceptum for Apostles on Appeal.
13. Acknowledgment of receipt of papers on appeal.

Dated: May 28, 1952.

/s/ JAMES A. QUINBY,

/s/ LLOYD M. TWEEDT,

/s/ STANLEY J. COOK,

DERBY, SHARP, QUINBY &  
TWEEDT,

Proctors for respondent-  
appellant.

[Endorsed]: Filed May 28, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
APOSTLES ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing documents are the originals filed in this Court in the above-entitled case, and that they constitute the apostles on appeal as designated by the Proctors for the Appellant herein, to wit:

Libel for collision damage.

Answer to libel.

Interrogatories propounded by Respondent.

Answers to interrogatories propounded by Respondent.

Stipulation of facts.

Memorandum opinion.

Findings of fact and conclusions of law.

Final decree.

Petition for appeal.

Order allowing appeal and staying execution.

Assignment of errors.

Citation on appeal.

Acknowledgment of receipt of papers on appeal.

Praecipe for apostles on appeal.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 24th day of June, 1952.

C. W. CALBREATH,  
Clerk,

[Seal] By /s/ C. W. TAYLOR,  
Deputy Clerk.



[Endorsed]: No. 13439. United States Court of Appeals for the Ninth Circuit. Shipowners and Merchants Tugboat Company, a corporation, Appellant, vs. United States of America, Appellee. Apostles on Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed June 24, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals  
For the Ninth Circuit.

No. 13,439

SHIPOWNERS & MERCHANTS TUGBOAT  
CO., a Corporation,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS RELIED UPON ON APPEAL AND DESIGNATION OF RECORD NECESSARY FOR CONSIDERATION.

Pursuant to Rule 19(6) of the Rules of the above-entitled Court, the above-named appellant herewith refers to points 1 to 10, inclusive, of its Assignment of Errors heretofore filed with the Clerk of the United States District Court for the Southern Division of the Northern District of California and certified to this Court by said Clerk as part of the record on appeal, and adopts the same as its statement of points relied upon on appeal.

Appellant further designates as necessary for the consideration of this appeal, and to be printed, the following parts of the record certified to this Court by the aforementioned Clerk of the District Court:

1. Libel for collision damage.
2. Answer to libel.

3. Interrogatories propounded by respondent to libelant.

4. Answers to interrogatories propounded by respondent to libelant.

5. Stipulation of Facts.

6. Findings of Fact and Conclusions of Law.

7. Memorandum opinion filed March 6, 1952.

8. Final decree.

9. Petition for appeal.

10. Order allowing appeal and staying execution.

11. Assignment of Errors.

12. Praeceptum for Apostles on Appeal.

14. This statement of points and designation of record to be printed.

15. Citation on Appeal.

16. Clerk's Certificate.

Dated: June 25, 1952.

/s/ JAMES A. QUINBY,

/s/ LLOYD M. TWEEDT,

/s/ STANLEY J. COOK,

DERBY, SHARP, QUINBY &  
TWEEDT,

Proctors for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 25, 1952.

